Supreme Court, U.S.
FILED
JUN 22 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-682

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

---

TECHNOGRAPH LIQUIDATING TRUST,
*Petitioner,*

*v.*

GENERAL MOTORS CORPORATION,
*Respondent.*

---

## SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER TECHNOGRAPH LIQUIDATING TRUST

---

SIDNEY BENDER
AARON LEWITTES
JANINE L. BENDER
SYMA S. LEVINE
LEVENTRITT LEWITTES & BENDER
1205 Franklin Avenue
Garden City, N.Y. 11530
(516) 742-4250

ALFRED W. PUTNAM, JR.
DRINKER BIDDLE & REATH
1100 Philadelphia National Bank Building
Philadelphia, Pa. 19107
(215) 988-2700

REX E. LEE*
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

ROBERT K. PAYSON
POTTER ANDERSON & CORROON
350 Delaware Trust Building
Wilmington, Del. 19899
(302) 658-6771

*Counsel for Petitioner*

* Counsel of Record

June 22, 1988

## SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER TECHNOGRAPH LIQUIDATING TRUST

In light of this Court's decision in *Christianson v. Colt Industries Operating Corp.*, No. 87-499, June 17, 1988, petitioner Technograph Liquidating Trust respectfully submits this supplemental brief in support of its petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit. Under *Christianson*, this Court should grant the petition, vacate the judgment of the Court of Appeals for the Third Circuit in *Technograph Liquidating Trust v. General Motors Corp.* for want of jurisdiction, and remand with instructions to transfer the case to the United States Court of Appeals for the Federal Circuit for review on the merits.

*Christianson* confirms that petitioner was correct in its interpretation of the grant of jurisdiction in 28 U.S.C. Sec. 1295 (a)(1). First, the Federal Circuit erred when it abdicated its jurisdiction of the appeal where the *district court's* jurisdiction was indisputably based on section 1338* and where 28 U.S.C. Sec. 1295(a)(1) explicitly mandates that such an appeal lies in the Federal Circuit. *Christianson*, sl. op. 11. Second, the Third Circuit erred in accepting and deciding the appeal where the Federal Circuit's decision to transfer the case to it "was clearly wrong," *Christianson*, sl. op. 15. *Christianson* reaffirms that "[c]ourts created by statute can have no jurisdiction but such as the statute confers." *Id.*

As is relevant to this case, *Christianson* stands for the following propositions:

1. The mandatory reference point for appellate jurisdiction under Section 1295(a)(1) is the predicate for jurisdiction of the district court. "Since the District Court's

* Complaint, para. 1 (20a).

jurisdiction is determined by reference to the well-pleaded complaint, not the well-tried case, the referent for the Federal Circuit's jurisdiction must be the same." *Christianson*, sl. op. at 11. Thus, in the petition *sub judice*, given that the jurisdiction of the district court indisputably arises under section 1338, the Federal Circuit is the *only* court that has jurisdiction of the appeal in this case. Neither "interests of comity and judicial economy" (Technograph Transfer Order, 3a) nor interests of justice can create a jurisdictional basis where none exists.

2. A clearly erroneous decision with regard to jurisdiction cannot in any event bind another court. *Christianson* reminds us that if a transfer order is "clearly wrong," the transferee court is *obliged* to decline jurisdiction, sl. op. 15. Here, the transfer order of the Federal Circuit was "clearly wrong": it ignored the statutory mandate of 28 U.S.C. § 1295(a)(1); it ignored the requirement of 28 U.S.C. § 1631 — it did not, because it could not, make a finding of a "want of jurisdiction"; and it focused on irrelevant factors such as "comity and judicial economy." (3a). Jurisdiction over Technograph's appeal did not raise a close question nor was the Federal Circuit's transfer decision "plausible," sl. op. 17. Thus, the Third Circuit erred in deciding the case despite its lack of jurisdiction. Because the doctrine of "law of the case will not shield an incorrect jurisdictional decision. . . . " *Christianson*, sl. op. at 17, this Court should now rectify that error by vacating the judgment below.

## CONCLUSION

**The petition for a writ of certiorari should be granted, the judgment of the Court of Appeals for the Third Circuit vacated, and the case remanded to the Third Circuit with instructions to transfer this case to the Court of Appeals for the Federal Circuit.**

Respectfully submitted,

SIDNEY BENDER
AARON LEWITTES
JANINE L. BENDER
SYMA S. LEVINE
LEVENTRITT LEWITTES & BENDER
1205 Franklin Avenue
Garden City, N.Y. 11530
(516) 742-4250

ALFRED W. PUTNAM, JR.
DRINKER BIDDLE & REATH
1100 Philadelphia National Bank Building
Philadelphia, Pa. 19107
(215) 988-2700

REX E. LEE*
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

ROBERT K. PAYSON
POTTER ANDERSON & CORROON
350 Delaware Trust Building
Wilmington, Del. 19899
(302) 658-6771

*Counsel for Petitioner*

June 22, 1988

* Counsel of Record